

104TH CONGRESS  
2D SESSION

# S. 1629

To protect the rights of the States and the people from abuse by the Federal Government; to strengthen the partnership and the intergovernmental relationship between State and Federal Governments; to restrain Federal agencies from exceeding their authority; to enforce the Tenth Amendment to the Constitution; and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 20, 1996

Mr. STEVENS (for himself, Mr. DOLE, Mr. ABRAHAM, Mr. BENNETT, Mr. BROWN, Mr. COATS, Mr. COCHRAN, Mr. COVERDELL, Mr. CRAIG, Mr. D'AMATO, Mr. FAIRCLOTH, Mr. GRAMS, Mr. GREGG, Mr. HATCH, Mr. HELMS, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUE, Mr. KEMPTHORNE, Mr. KYL, Mr. NICKLES, Mr. SIMPSON, Mr. SMITH, and Mr. THOMPSON) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To protect the rights of the States and the people from abuse by the Federal Government; to strengthen the partnership and the intergovernmental relationship between State and Federal Governments; to restrain Federal agencies from exceeding their authority; to enforce the Tenth Amendment to the Constitution; and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This act may be referred to as the “Tenth Amend-  
3 ment Enforcement Act of 1996”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds that—

6 (a) in most areas of governmental concern, State gov-  
7 ernments possess both the Constitutional authority and  
8 the competence to discern the needs and the desires of  
9 the People and to govern accordingly;

10 (b) Federal laws and agency regulations, which have  
11 interfered with State powers in areas of State jurisdiction,  
12 should be restricted to powers delegated to the Federal  
13 Government by the Constitution;

14 (c) the framers of the Constitution intended to bestow  
15 upon the Federal Government only limited authority over  
16 the States and the People;

17 (d) under the Tenth Amendment to the Constitution,  
18 the powers not delegated to the United States by the Con-  
19 stitution, nor prohibited by it to the States, are reserved  
20 to the States respectively, or to the people; and

21 (e) the courts, which have in general construed the  
22 Tenth Amendment not to restrain the Federal Govern-  
23 ment’s power to act in areas of state jurisdiction, should  
24 be directed to strictly construe Federal laws and regula-  
25 tions which interfere with State powers with a presump-

1 tion in favor of State authority and against Federal pre-  
 2 emptio.

3 **SEC. 3. CONGRESSIONAL DECLARATION.**

4 (a) On or after January 1, 1997, any statute enacted  
 5 by Congress shall include a declaration—

6 (1) that authority to govern in the area ad-  
 7 dressed by the statute is delegated to Congress by  
 8 the Constitution, including a citation to the specific  
 9 Constitutional authority relied upon;

10 (2) that Congress specifically finds that it has  
 11 a greater degree of competence than the States to  
 12 govern in the area addressed by the statute; and

13 (3) if the statute interferes with State powers  
 14 or preempts any State or local government law, reg-  
 15 ulation or ordinance, that Congress specifically in-  
 16 tends to interfere with State powers or preempt  
 17 State or local government law, regulation, or ordi-  
 18 nance, and that such preemption is necessary.

19 (b) Congress must make specific factual findings in  
 20 support of the declarations described in this section.

21 **SEC. 4. POINT OF ORDER.**

22 (a) IN GENERAL.—

23 (1) INFORMATION REQUIRED.—It shall not be  
 24 in order in either the Senate or House of Represent-  
 25 atives to consider any bill, joint resolution, or

1 amendment that does not include a declaration of  
2 Congressional intent as required under section 3.

3 (2) SUPERMAJORITY REQUIRED.—The require-  
4 ments of this subsection may be waived or sus-  
5 pended in the Senate or House of Representatives  
6 only by the affirmative vote of three-fifths of the  
7 Members of that House duly chosen and sworn. An  
8 affirmative vote of three-fifths of the Members of the  
9 Senate or House of Representatives duly chosen and  
10 sworn shall be required to sustain an appeal of the  
11 ruling of the chair on a point of order raised under  
12 this subsection.

13 (b) RULE MAKING.—This section is enacted—

14 (1) as an exercise of the rule-making power of  
15 the Senate and House of Representatives, and as  
16 such, it is deemed a part of the rules of the Senate  
17 and House of Representatives, but is applicable only  
18 with respect to the matters described in sections 3  
19 and 4 and supersedes other rules of the Senate or  
20 House of Representatives only to the extent that  
21 such sections are inconsistent with such rules; and

22 (2) with full recognition of the Constitutional  
23 right of the Senate or House of Representatives to  
24 change such rules at any time, in the same manner

1 as in the case of any rule of the Senate or House  
2 of Representatives.

3 **SEC. 5. EXECUTIVE PREEMPTION OF STATE LAW.**

4 (a) IN GENERAL.—Chapter 5 of title 5, United  
5 States Code, is amended by inserting after section 559 the  
6 following new section:

7 **“SEC. 560. PREEMPTION OF STATE LAW.**

8 “(a) No executive department or agency or independ-  
9 ent agency shall construe any statutory authorization to  
10 issue regulations as authorizing preemption of State law  
11 or local ordinance by rule-making or other agency action  
12 unless—

13 “(1) the statute expressly authorizes issuance of  
14 preemptive regulations; and

15 “(2) the executive department, agency or inde-  
16 pendent agency concludes that the exercise of State  
17 power directly conflicts with the exercise of Federal  
18 power under the Federal statute, such that the State  
19 statutes and the Federal rule promulgated under the  
20 Federal statute cannot be reconciled or consistently  
21 stand together.

22 “(b) Any regulatory preemption of State law shall be  
23 narrowly tailored to achieve the objectives of the statute  
24 pursuant to which the regulations are promulgated and  
25 shall explicitly describe the scope of preemption.

1       “(c) When an executive branch department or agency  
2 or independent agency proposes to act through rule-mak-  
3 ing or other agency action to preempt State law, the de-  
4 partment or agency shall provide all affected States notice  
5 and an opportunity for comment by duly elected or ap-  
6 pointed State and local government officials or their des-  
7 ignated representatives in the proceedings.

8           “(1) The notice of proposed rule-making must  
9 be forwarded to the Governor, the Attorney General  
10 and the presiding officer of each chamber of the  
11 Legislature of each State setting forth the extent  
12 and purpose of the preemption. In the table of con-  
13 tents of each Federal Register, there shall be a sepa-  
14 rate list of preemptive regulations contained within  
15 that Register.

16       “(d) Unless a final executive department or agency  
17 or independent agency rule or regulation contains an ex-  
18 plicit provision declaring the Federal Government’s intent  
19 to preempt State or local government powers and an ex-  
20 plicit description of the extent and purpose of that pre-  
21 emptio, the rule or regulation shall not be construed to  
22 preempt any State or local government law, ordinance or  
23 regulation.

24       “(e) Each executive department or agency or inde-  
25 pendent agency shall publish in the Federal Register a

1 plan for periodic review of the rules and regulations issued  
 2 by the department or agency that preempt, in whole or  
 3 in part, State or local government powers. This plan may  
 4 be amended by the department or agency at any time by  
 5 publishing a revision in the Federal Register.

6 “(1) The purpose of this review shall be to de-  
 7 termine whether and to what extent such rules are  
 8 to continue without change, consistent with the stat-  
 9 ed objectives of the applicable statutes, or are to be  
 10 altered or repealed to minimize the effect of the  
 11 rules on State or local government powers.”.

12 (b) Any Federal rule or regulation promulgated after  
 13 January 1, 1997, that is promulgated in a manner incon-  
 14 sistent with this section shall not be binding on any State  
 15 or local government, and shall not preempt any State or  
 16 local government law, ordinance, or regulation.

17 (c) CONFORMING AMENDMENT.—The table of sec-  
 18 tions for chapter 5 of title 5, United States Code, is  
 19 amended by adding after the item for section 559 the fol-  
 20 lowing:

“560. Preemption of State Law.”.

21 **SEC. 6. CONSTRUCTION.**

22 (a) No statute, or rule promulgated under such stat-  
 23 ute, enacted after the date of enactment of this Act, shall  
 24 be construed by courts or other adjudicative entities to  
 25 preempt, in whole or in part, any State or local govern-

1 ment law, ordinance or regulation unless the statute, or  
2 rule promulgated under such statute, contains an explicit  
3 declaration of intent to preempt, or unless there is a direct  
4 conflict between such statute and a State or local govern-  
5 ment law, ordinance, or regulation, such that the two can-  
6 not be reconciled or consistently stand together.

7 (b) Notwithstanding any other provisions of law, any  
8 ambiguities in this Act, or in any other law of the United  
9 States, shall be construed in favor of preserving the au-  
10 thority of the States and the People.

11 (c) If any provision of this Act, or the application  
12 thereof to any person or circumstance, is held invalid, the  
13 validity of the remainder of the Act and the application  
14 of such provision to other persons and circumstances shall  
15 not be affected thereby.

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